

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM WEEKS,

Plaintiff,

- against -

MALIBU DUDE RANCH INC.

Defendant.

Docket No.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff William Weeks ("Weeks" or "Plaintiff") by and through his undersigned counsel, as and for his Complaint against Defendant Malibu Dude Ranch Inc. ("Malibu" or "Defendant") hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant's unauthorized reproduction and public display of a copyrighted photograph of a cowboy and his son, owned and registered by Weeks, a professional photographer. Accordingly, Weeks seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in Pennsylvania.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Weeks is a professional photographer in the business of licensing his photographs for a fee having a usual place of business at 129 Pine Drive, Ringgold, Georgia 30736.

6. Upon information and belief, Malibu is a domestic business corporation duly organized and existing under the laws of the State of Pennsylvania, with a place of business at 351 Foster Hill Road, Milford, PA 18337. Upon information and belief Malibu is registered with the Pennsylvania Department of State Division of Corporations to do business in the State of Pennsylvania. At all times material, hereto, Malibu has owned and operated a website at the URL: www.MalibuDudeRanch.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. Weeks photographed a cowboy and his son (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Weeks is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-037-895.

B. Defendant's Infringing Activities

10. Malibu ran the Photograph on their Website banner to advertise their Father's Day weekend. See URL: <http://malibududeranch.com/events/fathers-day.html>. A screenshot of the Photograph on the Website is attached hereto as Exhibit B.

11. Malibu did not license the Photograph from Plaintiff for its Website, nor did Malibu have Plaintiff's permission or consent to publish the Photograph on its Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Malibu infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Malibu is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST
DEFENDANT
(17 U.S.C. § 1202)

17. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-16 above.

18. Upon information and belief, Defendant intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.

19. The conduct of Malibu violates 17 U.S.C. § 1202(b).

20. Upon information and belief, Malibu's falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

21. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Malibu intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph. Malibu also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph.

22. As a result of the wrongful conduct of Malibu as alleged herein, Plaintiff is entitled to recover from Malibu the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Malibu because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

23. Alternatively, Plaintiff may elect to recover from Malibu statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Malibu be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant Malibu be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202;
3. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
 - a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203(b);
7. That Plaintiff be awarded punitive damages for copyright infringement;
8. That Plaintiff be awarded costs, expenses, and attorney's fees;
9. That Plaintiff be awarded pre-judgment interest; and
10. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal

Rule of Civil Procedure 38(b).

Dated: Philadelphia, PA
March 14, 2019

LAW OFFICES OF BRUCE J. CHASAN, LLC

By: /s/Bruce J. Chasan
Bruce J. Chasan
1500 JFK Blvd. Suite 312
Philadelphia, PA 19102
Tele: 215-567-4400
bjchasan@brucechasanlaw.com

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz
Richard P. Liebowitz
11 Sunrise Plaza, Suite 305
Valley Stream, NY 11580
(516) 233-1660
RL@LiebowitzLawFirm.com
(*Pro Hac Vice Forthcoming*)

Attorneys for Plaintiff William Weeks